

Message Text

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ACTION SNM-05

INFO OCT-01 EUR-12 ISO-00 L-03 PPTE-00 CA-01 DEAE-00
CIAE-00 INR-10 IO-14 JUSE-00 NSAE-00 CTME-00
TRSE-00 ICA-20 NSC-05 OES-09 OMB-01 SCS-06 /087 W
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R 111540Z JUL 78
FM AMEMBASSY BRUSSELS
TO SECSTATE WASHDC 7778

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E.O. 11652: N/A
TAGS: SNAR, BE
SUBJECT: BELGIAN NARCOTICS LAWS

REF: STATE 170187

1. BELGIAN NARCOTICS AND DANGEROUS DRUG LAW, WHICH BE-
CAME EFFECTIVE OCTOBER 6, 1975 AND MODIFIED AN EARLIER
1921 LAW, DOES NOT DIFFERENTIATE BETWEEN POSSESSION OF
MARIHUANA OR ANY OTHER DRUG SUBSTANCE. MARIHUANA,
COCAINE, HEROIN, BARBITURATES AND AMPHETAMINES ARE ALL,
ACCORDING TO BELGIAN LAW, QUOTE SUBSTANCES CAPABLE OF
CREATING A DEPENDENCE END QUOTE AND ARE THEREFORE EITHER
PROHIBITED OR STRICTLY CONTROLLED AS IN THE CASE OF DRUGS
WITH LEGITIMATE MEDICINAL VALUE.

2. THE LAW PROVIDES FOR CRIMINAL PENALTIES RANGING FROM
3 MONTHS TO 5 YEARS OF PRISON AND/OR A FINE OF 1000 TO
100,000 BELGIAN FRANCS (DOLLARS 32 TO DOLLARS 32 THOUSAND)
TO ANY INDIVIDUAL WHO IMPORTS, EXPORTS, FABRICATES, TRANS-
PORTS, POSSESSES, SELLS OR OFFERS TO SELL ANY OF THE
ABOVE-NAMED SUBSTANCES WITHOUT BEING DULY LICENSED BY THE
GOVERNMENT. THE QUALIFYING AMOUNT IS THAT AMOUNT
NECESSARY TO BE POSITIVELY IDENTIFIED AS A DRUG SUBSTANCE
BY THE DRUG TESTING LABORATORY. IT IS THE PROSECUTOR'S
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RESPONSIBILITY TO DETERMINE WHETHER OR NOT THE AMOUNT
SEIZED WARRANTS PROSECUTION OF THE VIOLATOR. IN MOST
CASES, PENALTIES ARE LESS SEVERE FOR CASES INVOLVING
POSSESSION OF QUANTITIES FOR PERSONAL CONSUMPTION.

3. FOR THE PROTECTION OF BELGIAN YOUTH, PROVISIONS FOR
MORE SEVERE SENTENCES EXIST IN CASES INVOLVING

ADOLESCENTS 16 YEARS OLD OR YOUNGER. TO OFFER OR SELL A DRUG SUBSTANCE TO PERSONS(S) SIXTEEN YEARS OF AGE RESULTS IN A PRISON SENTENCE OF FROM FIVE TO TEN YEARS AT HARD LABOR. SELLING OR OFFERING TO PERSONS UNDER TWELVE YEARS OF AGE IS PUNISHABLE BY PRISON SENTENCE OF FIFTEEN TO TWENTY YEARS AT HARD LABOR.

4. PENALTY PROVISIONS ARE DOUBLED FOR SECOND OFFENDERS IF THE SECOND OFFENSE IS COMMITTED LESS THAN FIVE YEARS AFTER THE FIRST.

5. THE AMOUNT OF DRUG NECESSARY TO CONSTITUTE A TRAFFICKING OFFENSE IS LEFT TO THE DISCRETION OF THE JUDGE.

6. CONSPIRACY PROVISIONS IN THE STRICTEST SENSE DO NOT EXIST. MEMBER OR MEMBERS OF A TRAFFICKING GROUP ARE TRIED AS QUOTE ACCESSORIES UNQUOTE TO A SUBSTANTIVE CASE.

7. THERE ARE NEITHER MANDATORY SENTENCING REQUIREMENTS NOR ARE THERE MINIMUM PENALTIES. JUDGE IS GIVEN CONSIDERABLE LATITUDE IN THE AREA OF SENTENCING.

8. ALTHOUGH BAIL AS SUCH DOES NOT EXIST IN BELGIUM, AN DETAINEE CAN BE GRANTED PROVISIONAL LIBERTY AT THE DISCRETION OF THE EXAMINING MAGISTRATE. THIS ACTION IS DETERMINED ON A CASE-BY-CASE BASIS.
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9. THE CULTIVATION OF MARIHUANA, COCOA LEAVES AND OPIUM POPPY IS PROHIBITED BY LAW IN BELGIUM. THERE IS NO KNOWN PRODUCTION OF ANY OF THE ABOVE IN BELGIUM.

10. AS SEAT OF THE EUROPEAN ECONOMIC COMMUNITY AND AS AN IMPORTANT ECONOMIC/FINANCIAL CENTER, BELGIUM HAS NO CONTROLS ON CURRENCY EXPORT NOR ON FOREIGN BANK ACCOUNTS.

11. INVESTIGATIVE DETENTION BY POLICE OR GENDARMERIE IS NORMALLY TWENTY-FOUR HOURS. HOWEVER, DEPENDING ON THE LEVEL OF DIFFICULTY OF THE INVESTIGATION, EXTENSIONS OF THIS TIME PERIOD CAN BE GRANTED BY THE EXAMINING MAGISTRATE UP TO A MAXIMUM OF FIVE DAYS. BY CONSULAR CONVENTION, EMBASSY'S CONSULAR SECTION SHOULD BE ADVISED OF A U.S. CITIZEN'S ARREST IMMEDIATELY UPON THE DEMAND OF THE DETAINED U.S. NATIONAL. ALSO ACCORDING TO CONSULAR CONVENTION, U.S. CONSUL HAS IMMEDIATE ACCESS ON DEMAND OF ARRESTED U.S. NATIONAL. ON OCCASIONS, HOWEVER, AUTHORITIES MAY "NEGLECT" TO INFORM DETAINED U.S. CITIZEN OF THIS RIGHT.

12. PRE-TRIAL DETENTION VARIES BETWEEN 30 AND 60 DAYS.

THE TRIAL ITSELF, DEPENDING ON COMPLICATIONS INVOLVED,
WILL TAKE ANYWHERE BETWEEN 20 MINUTES AND 3 DAYS. THE
APPELLATE PROCESS REQUIRES 6 MONTHS TO ONE YEAR.

13. LEGAL COUNSEL IS APPOINTED BY THE COURT AT NO CHARGE
TO THE ARRESTEE SHOULD HE DECLARE HIMSELF DESTITUTE. THE
FEE FOR PRIVATE COUNSEL MAY RANGE FROM DOLLARS 500 TO
DOLLARS 25,000, DEPENDING ON THE CASE.

14. A PROVISION EXISTS FOR GRANTING CONDITIONAL LIBERTY
WHICH IS IN PART SIMILAR TO THE U.S. WORK RELEASE PROGRAM.

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THIS TYPE OF RELEASE IS NORMALLY ONLY GRANTED TO THOSE
INDIVIDUALS INVOLVED IN PETTY CRIMES BUT WHOSE RECORD
REVEALS STEADY EMPLOYMENT UP TO THE TIME OF THEIR
DETENTION.

15. IN ARRESTS INVOLVING MINOR QUANTITIES OF DRUGS,
PARTICULARLY CANNABIS, IT IS NOT AT ALL UNCOMMON FOR THE
ARRESTEE TO PAY A SMALL FINE (DOLLARS 250 TO DOLLARS 500)
AND THEN TO BE EXPELLED FROM THE COUNTRY.
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